IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/12/2002

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 3323 OF 1999
AND
W.M.P. NO. 4732 OF 1999

Gurusamy Gounder .. Petitioner

-Vs-

1. State of Tamil Nadu
rep. by its Commissioner
to Government
Social Welfare Department
Chennai 9.

2. The District collector
Erode District, Erode.

3. The Special Tahsildar
Adi Dravidar Welfare
Erode. .. Respondents

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorari as stated therein.

For Petitioners : Mr. R.Shanmugam, SC, for
Mr. S.Ravi

For Respondents : Mr. S.Gomathinayagam, Spl.G.P.

:ORDER

1. The writ petitioner, owner of survey No.897/2 Part, measuring 0.28 .5 Hectares in Anthiyur Village, Bhavani Taluk, Erode District, has prayed for the issue of a writ of certiorari to call for and quash the notice issued by the 3rd respondent, Special Deputy Tahsildar, Adi Dravidar Welfare, Erode in his office Ref. No.3201/98 A dated 21.1.99 issued in Form No.I.
2. The 3rd respondent issued a notice under Section 4 (2) of The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 read with Rule 3 (1) of The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979. The 3rd respondent issued Form I notice in respect of the schedule mentioned lands situate in Anthiyur Village, Bhavani Taluksetting out that the lands are necessary to be acquired for the purpose of providing burial ground and

pathway to proposed burial ground to the Samathuvapuram families of Anthiyur Village. On the service of the said notice, the present writ petition has been filed praying for the issue of a writ of certiorari, as according to the petitioner no acquisition of land could be undertaken under The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, for the schemes which are not provided under the Act and the action of the 3rd respondent is without jurisdiction. The requirement of land being for the purpose of burial ground and pathway for Samathuvapuram, the lands cannot be acquired under the Tamil Nadu Act and proposal to acquire lands under The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, is beyond the scope of the Act and such acquisition is without authority of law.

3. Heard Mr.R.Shanmugam, learned senior counsel appearing for Mr.S. Ravi, for the petitioner and Mr.S.Gomathinayagam, learned Special Government Pleader appearing for the respondents.

4. The substantial contention that arise for consideration in this writ petition being :-

"Whether the lands could be acquired under The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, for provision of burial ground and pathway to the residents' of Samathuvapuram ?"

5. Mr. R.Shanmugam, learned senior counsel contended that acquisition for the residents' of Samathuvapuram will not fall under the Harijan Welfare Scheme as defined under Section 3 (g), as Scheduled Caste/ Scheduled Tribe are not the exclusive residents' of Samathuvapuram but majority residents belong to other castes. Acquisition, if any, under the Tamil Nadu Act, 1978, could be for Scheduled Caste of Scheduled Tribe. Such acquisition could be undertaken only if it is for the exclusive user of Scheduled Caste of Scheduled Tribe and not for persons other than Scheduled Caste of Scheduled Tribe.

6. The concept of formation of Samathuvapuram at fifty places in the State was sanctioned by the State Government by G.O. (Permanent) No.1 71, Adi Dravidar & Tribal Welfare Department, dated 22.10.97 on the eve of the 50th Independence Day Celebrations with the object of providing house sites to all without any discrimination. In terms of the said G.O., Samathuvapuram should at least provide for 100 houses of five cents of land each and lands will be allotted to Scheduled Caste of Scheduled Tribe, Backward Classes, Most Backward Classes and Other Communities freely and each one of them is granted Rs.35,000/= to put up construction. The G.O. provides for provision of roads, water facilities, electricity facility, street lighting at the cost of the Government, besides overhead tank, shop for Public Distribution System, Television, Park and other facilities common to all as well as an elementary school. The object being irrespective of the caste or creed, the 100 families should live together as equals and as homogeneous society. Allotment also should be made for various communities not under one category, but it should be seen that the allotments are made at random so that everyone gets mixed and live together. While allotting plots and houses, 40% has to be allotted to Adi Dravidars, 25 % to Backward classes and 25% to Most Backward classes and 10% to all others.

7. Therefore, it is clear that only 40 out of 100 of the house/ families of Samathuvapuram are members of Scheduled Caste of Scheduled Tribe and the remaining 60 out of 100 families belong to castes other than Scheduled Caste of Scheduled Tribe. The object of the scheme Samathuvapuram is for a

homogeneous living of various communities, regardless of caste or religion or creed so that they live together.

8. The said G.O. also provides that lands could be acquired, if necessary, for provision of 100 house sites of five cents each to each of the 100 residents' of Samathuvapuram, who belong to cross-section of the society of which only 40% are members of Scheduled Caste of Scheduled Tribe. This fact is not in dispute.

9. In terms of the impugned notice issued under Form I, the acquisition provides for a burial ground and pathway to the burial ground to the families residing at Samathuvapuram. The Samathuvapuram families include 40% of Scheduled Caste of Scheduled Tribe and 60% other than Scheduled Caste of Scheduled Tribe. To consider the legal contention advanced, it is essential to refer to the provisions of The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978.

10. Section 2 of the Act declares that the Act is for giving effect to the policy of the State towards principles laid down in Part IV and in particular Article 46 of The Constitution. Section 3 (g) defines the expression "Harijan Welfare Scheme" and the definition reads thus :-

"3 (g) "Harijan Welfare Scheme" means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans."

11. In terms of Section 4, for the purpose of Harijan Welfare Schemes, if the land is required to be acquired, the District Collector may acquire. The land could be acquired under the Act for the purpose of any Harijan Welfare Scheme, such as provision of house sites for harijans, for constructing, extending or improving any dwelling house for harijan or for providing any burial or burning grounds for harijans or for providing any pathway leading to such dwelling houses, burial or burning grounds or for providing such other amenity for the benefit of harijans. No other beneficial proposal or object will fall under this scheme. The object of such a scheme is to benefit the harijans.

12. The expression "Harijan" has been defined under Section 3 (f). Harijan means "members of Scheduled Caste of Scheduled Tribe" and the explanation to the said definition further provides as to what is the meaning of Scheduled Caste of Scheduled Tribe. Section 3 (f) reads thus :-

""Harijans" means members of the Scheduled Castes and include Scheduled Tribes."

13. A reading of the said definition, with the definition Harijan Welfare Scheme would mean the acquisition exclusively for harijans and there could be no acquisition for the beneficiaries, who are other than harijans. The object of Samathuvapuram scheme may be laudable.

14. Section 20 of the Act provides that the provisions of The Land Acquisition Act, 1894, shall cease to apply to any land, which is required for the purpose specified in sub-section (1) of Section 4 and acquisition shall be undertaken only in accordance with the provisions of this enactment. Section 21 provides that the provisions of the Act shall have overriding effect. Section 22 provides that the provisions of Act shall apply also to any action or cause in which proceedings have been started before the commencement of the Act for the acquisition of any land for harijan welfare scheme under The Land Acquisition Act.

15. On a conjoint reading of the above provisions, it is clear that acquisition under the said Act, if any, could be undertaken for harijan welfare schemes and for the benefit of harijans exclusively. The expression which includes Scheduled Caste of Scheduled Tribe has also been defined. The expression Scheduled Caste of Scheduled Tribe has the same meaning as in The Constitution of Scheduled Caste Order, 1950 and The Constitution of Scheduled Tribe Order, 1950.

16. Therefore, even if a portion of the beneficiaries or fraction of the beneficiaries are not harijans, no acquisition could be undertaken under the Act and acquisition, if any, has to be undertaken only under The Land Acquisition (Central) Act. The enactment being exproprietary in nature, which provides for compulsory acquisition, has to be construed strictly as it deprives the valuable rights of owners of any lands or buildings as defined under the Act. As already pointed out, in each Samathuvapuram, the harijans form only 40% and remaining occupants being other than harijans. It is not the case of the respondents that a separate burial ground is provided for the harijans living in Samathuvapuram, while admittedly the harijans and others live together as neighbours and as a homogeneous society.

17. The right to economic justice to members of Scheduled Caste of Scheduled Tribe or other Backward classes is a fundamental right as held in PAPIAH VS. STATE OF KARNATAKA & OTHERS reported in 1996 (10) SCC 533. Article 46 of The Constitution, in terms of its preamble enjoins upon the State to provide economic justice to the Scheduled Caste of Scheduled Tribe and other weaker sections of the society and to prevent their exploitation. The right to economic justice is a fundamental right to secure equality of status, opportunity and liberty.

18. Therefore, it is clear and obvious that the object of formation of each Samathuvapuram for 100 families being they should reside together in Samathuvapuram without difference or discrimination.

19. Any deviation to provide or attempt to provide a separate burial ground to Harijan residents' of Samathuvapuram will defeat the very object of Samathuvapuram as formulated by the Government. That apart, it is not the case of the respondents that a separate burial ground is being provided for harijans alone, but the land is sought to be acquired for the provision of burial ground to all the 100 occupants/ residents of Samathuvapuram, which includes not only 40% of the harijan families, but also 60% of castes other than harijans.

20. The validity of Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act was the subject matter of consideration in STATE OF TAMIL NADU VS. ANANTHI AMMAL reported in 1995 (1) SCC 519. The Apex Court held that the provisions of the Act is intra vires to Article 14 except sub-section (1) of Section 11.

21. As already pointed out, the very enactment itself as declared under Section 2 is for giving effect to the policy of State towards securing the directive principles and in particular Article 46. Article 46 of The Constitution directed that the State shall promote with special care the educational and economic care of the weaker section of the people and in particular Scheduled Caste of Scheduled Tribe. It is a special legislation for providing house sites or improving the house sites, providing dwelling houses for harijans or providing for burial or burning grounds or pathway for the benefit of harijans. It is an exclusive legislation and special enactment

enacted by the State Legislature exclusively for the benefit of harijans.
22. This legislation is a class by itself and the intendment of the legislation is to provide the benefits under such scheme only to harijans and not for the benefit of any persons other than harijans. The expression harijans include only Scheduled Caste of Scheduled Tribe, which in turn means only tribes as specified in the Constitution of Scheduled Caste Order and the Constitution of Scheduled Tribe Order respectively. No other persons could be treated as a Scheduled Caste of Scheduled Tribe. Therefore, there could be no acquisition for providing any kind of benefit under the Harijan Welfare Scheme whatsoever other than the harijans.
23. Section 3 (f) of The Land Acquisition (Central) Act defines the expression 'Public Purpose'. Clause 5 includes the provision of land for residential purpose to the poor or landless or persons residing in areas affected by natural calamities or displaced persons. Therefore, acquisition, if any, for the benefit of persons other than harijan residents of Samathuvapuram could be undertaken only under the Central Act and not under the Tamil Nadu Act 36 of 1978.
24. For the formation of Samathuvapuram, the acquisition, if any, has to be undertaken only under the Central Act. Acquisition is not permissible under the Tamil Nadu Act 31 of 1978 for formation of Samathuvapuram as it is not a "Harijan Welfare Scheme" as contemplated therein. Viewed from yet another angle, by provision of burial ground to Harijan residents of Samathuvapuram alone will result in disintegration among its residents and resultantly defeat the very object and purpose with which Samathuvapurams were promoted in the State.
25. Thus in any view of the matter, there could be no acquisition for providing burial ground and pathway for the residents' of Samathuvapuram, who form a homogeneous society of Scheduled Caste or Scheduled Tribe or Most Backward class or Backward class and Other Communities. The issue of notice in Form I and proposal to acquire under the State Act and further proceedings, if any, is illegal, impermissible and is without jurisdiction.
26. In the result, the impugned notice is quashed and the writ petition is allowed as prayed for. Parties shall bear their respective costs. Consequently, connected writ miscellaneous petition is closed.

17.12.20002
Index : Yes
Internet : Yes
GLN

To
1. The Commissioner
Government of Tamil Nadu
Social Welfare Department
Chennai 9.

2. The District collector
Erode District, Erode.

3. The Special Tahsildar
Adi Dravidar Welfare
Erode.